

# Harmonizing State Privacy Law Collaborative Report



- Phase 3 of Health Information Security and Privacy Collaboration
- Convened under the auspices of ONCHIT, AHRQ; managed by RTI
- Ended 7/31/09
- Final scope of work: recommend elements of model health information exchange law
- Based on review of legislation from FL, MN, NM, RI

# Preliminary Recommendations



- **Electronic medical/health record-specific provisions**
  - Legal recognition
  - Retention requirements
  - Electronic signatures
- **Patient authorization/consent**
  - Universal authorization form (see Oklahoma/ Florida legislation)
  - Emergency access (see Minnesota, New Mexico and Rhode Island legislation)
  - Secondary disclosure

# Health Information Exchange-Specific Provisions



- Legal structure – describe or delineate
- Technical structure: use technology-neutral terms (see definitions)
- Provisions to allow patient to opt out (vs. opt-in)
- Requesting provider attestations or warrants of authorization
- Compensatory damages to patient for fraudulent authorization

# Definitions



Health information exchange technical definition: use technology neutral terms to define technical structure and “enterprise integration” definition in ARRA

Electronic medical/health record: suggest states reference or incorporate ARRA definitions as agreed by stakeholders. Related terms in ARRA include electronic health record, qualified electronic health record, certified health information technology.

# Other Matters



- Provider liability: states might address narrow issues such as provider liability when patient opts out
- Patient education regarding opting out to be clear about what records will or will not be shared by opting out of the health information exchange

# Contact information



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